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CLIENT/MATTER NO. 200302244-1 (1662-54900)

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PATENT APPLICATION

ATTORNEY DOCKET NO. 200302244-1

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Richard KENNEDY

Confirmation No.: 1325

Application No.: 10/080,999

Examiner: B. J. Jackson

Filing Date: 02/20/2002

Group Art Unit: 2685

Title: REMOTE STORAGE FOR ELECTRONICS

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TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on 03/03/2005.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

() (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

() one month	\$120.00
() two months	\$450.00
() three months	\$1020.00
() four months	\$1590.00

() The extension fee has already been filled in this application.

(X) (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$500.00. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Number of pages: 23

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Respectfully submitted,

Richard KENNEDY

By

Mark E. Scott

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Date: 03/30/2005

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PAGE 2/24 * RCVD AT 3/30/2005 3:37:30 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/2 * DNI:8729306 * CSD:7132388008 * DURATION (mm:ss):07-20

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PATENT APPLICATION

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	Richard KENNEDY	§	Confirmation No.:	1325
Serial No.:	10/080,999	§	Group Art Unit:	2685
Filed:	02/20/2002	§	Examiner:	B. J. Jackson
For:	Remote Storage For Electronics	§	Docket No.:	200302244-1

APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Date: March 30, 2005

Sir:

Appellant hereby submits this Appeal Brief in connection with the above-identified application. A Notice of Appeal was filed via facsimile on March 3, 2005.

Appl. No. 10/080,999
Appeal Brief dated March 30, 2005
Reply to final Office action of January 13, 2005

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I. REAL PARTY IN INTEREST

The real party in interest is the Hewlett-Packard Development Company (HPDC), a Texas Limited Partnership, having its principal place of business in Houston, Texas, through its merger with Compaq Computer Corporation (CCC) which owned Compaq Information Technologies Group, L.P. (CITG). The assignment from the inventor and CITG was recorded on October 13, 2004, at Reel/Frame 015244/0923.

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II. RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any related appeals or interferences.

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III. STATUS OF THE CLAIMS

Originally filed claims: 1-41.
Claim cancellations: None.
Withdrawn claims: 3-4, 10-31, 37 and 39.
Added claims: None.
Presently pending claims: 1-41.
Presently appealed claims: 1, 2, 5-9, 32-36, 38, 40 and 41.

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IV. STATUS OF THE AMENDMENTS

No claims were amended after the final Office action dated January 13, 2005.

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V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The various embodiments of the invention are directed to remote storage for electronics.¹ At least some of the various embodiments may be portable electronic device comprising a CPU,² a transceiver coupled to said CPU³ (said transceiver capable of wireless communications),⁴ a memory unit coupled to said CPU,⁵ and an image capture device coupled to said CPU (said image capture device acquires an image).⁶ The transceiver wirelessly transmits said image to a remote storage device through an intermediate electronic device,⁷ and the transceiver automatically begins transmitting said images after said image is acquired by said image capture device.⁸

Other illustrative embodiments may be a method for remote data storage and retrieval for portable electronics comprising acquiring an image with a portable electronic device,⁹ transmitting said image to an intermediate electronic device using wireless communications,¹⁰ further transmitting said image to a cellular network using wireless communications.¹¹ The cellular network is also connected to the Internet,¹² and the image is transmitted to a remote storage device (wherein said storage device is also connected to the Internet).¹³

¹ Specification Title.

² Specification paragraph [0021], line 6 within the paragraph. Hereinafter, citations to a particular specification paragraph and line within the paragraph, take the form ([paragraph number], [line within the paragraph]). For example, this cite in the shorthand notation is ([0021], line 6).

³ ([0021], line 5); Figure 2.

⁴ ([0021], lines 6-10).

⁵ ([0021], line 4); Figure 2.

⁶ ([0021], line 5); Figure 2.

⁷ ([0019], lines 7-10); Figure 2.

⁸ ([0030], lines 1-4).

⁹ ([0021], line 5); Figure 2.

¹⁰ ([0019], lines 7-10); Figure 2.

¹¹ ([0022], lines 2-4).

¹² ([0022], lines 6-7).

¹³ ([0025], lines 6-9).

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VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-2, 5-9, 32-36, 38 and 40-41 are unpatentable over Fukuoka (U.S. Pat. No. 6,300,976) in view of Harris (U.S. Pat. No. 6738643).

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VII. ARGUMENT

A. Claims 1-2, 8-9, 32-36 and 38

Claims 1-2, 8-9, 32-36 and 38 stand rejected as allegedly obvious over Fukuoka in view of Harris. Claim 1 is illustrative of this grouping of claims. This grouping is for purposes of this appeal only, and should not be construed to mean the patentability of any of the claims may be determined, in later actions before a court, based on the grouping. Rather, the presumption of 35 U.S.C. § 282 shall apply to each claim individually.

Fukuoka is directed to a digital image capturing device having an input/output interface through which the device is controlled.¹⁴ Fukuoka's Figure 3 is reproduced below for convenience of the discussion.

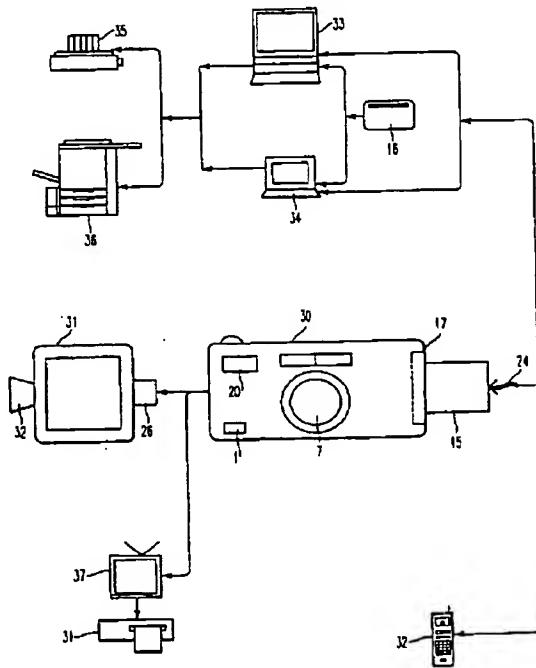


FIG. 3

In particular, Fukuoka contemplates a camera 30 that couples to and is controlled by peripheral devices, the coupling by way of I/O card 15 and line 24.¹⁵ Captured

¹⁴ Fukuoka Title.

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images may be either: transferred to the cellular phone 32 by way of the line 24 and then wirelessly transmitted to storage devices¹⁶; or transferred to a connected computer by way of line 24.¹⁷ Thus, regardless of the final destination of the images, the pathway immediately after the camera 30 is that of line 24.

Fukuoka discusses particular implementations in Figures 4 and 5. In Figure 4, the camera 30 appears to be hardwired to the computer 33,¹⁸ thus implying a connection as illustrated in Figure 3 between the camera 30 and computer 33. In Figure 5, the connection is said to be "a telephone network or other manner of communication such as by wireless communication,"¹⁹ thus implying in the second instance a connection as illustrated Figure 3 between the camera 30, telephone 32 and wireless connection to an "on-line service."²⁰

Harris is directed to a PDA and telephone associated so that the PDA can automatically dial the telephone.²¹ In particular, Harris discloses a PDA having contact information for a plurality of contacts.²² Dialing information for each contact may be sent over an infrared link to all devices in range and configured to accept the dialing information, such as a desktop telephone, cordless telephone or cellular telephone.²³ Harris's PDA may also detect attached accessories, and inform the user of available services by displaying an ICON for each accessory attached.²⁴ One of the accessories that may be attached is a camera 450, which may allow a user of the PDA to take a picture of the person to associate with the

¹⁶ Fukuoka Col. 3, lines 33-34.

¹⁸ Fukuoka Col. 3, lines 39-41.

¹⁷ Fukuoka Col. 4, lines 3-6.

¹⁹ See Fukuoka Col. 4, lines 6-8. Cf. Fukuoka Col. 4, lines 15-19; Figure 5 (which specifically delineate the possibility of a wireless connection from the camera to the computer).

²⁰ Fukuoka, Col. 5, lines 15-19; Figure 2.

²¹ Fukuoka, Col. 4, line 41.

²² Harris Abstract.

²³ Harris Col. 1, lines 46-47.

²⁴ Harris Col. 1, lines 52-57.

²⁵ Harris Col. 2, line 49 – Col. 3, line 17.

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person's contact information.²⁵ The picture taking ability, however, appears unrelated to the ability to have the PDA transfer dialing information to a nearby telephone.

Representative claim 1, by contrast, specifically recites, "a transceiver coupled to said CPU, said transceiver capable of wireless communications; ... an image capture device coupled to said CPU, said image capture device acquires an image; wherein said transceiver wirelessly transmits said image to a remote storage device through an intermediate electronic device... ." Applicant respectfully submits that Fukuoka and Harris fail to teach or fairly suggest the limitations of representative claim 1. Fukuoka clearly teaches a hard-wired connection between the camera 30 and the computer 33 or telephone 32. While Harris may teach wireless communication from a PDA, the information transferred appears only to be dialing information. Thus, even in Fukuoka and Harris are hypothetically considered together (which Applicant does not admit is proper), the combination still fails to teach "wherein said transceiver [of the portable electronic device] wirelessly transmits said image to a remote storage device through an intermediate electronic device... ." For this reason alone, the rejections should be reversed and the claims set for issue.

"Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined *only* if there is some suggestion or incentive to do so."²⁶ Fukuoka does not teach or fairly suggest that the line 24 should be anything other than a hard-wired connection to a computer or cellular telephone. Harris teaches that dialing information should be transferred from the PDA to the proximate telephones, and does not appear to even contemplate transfer of images through the proximate telephones. Thus, there is no teaching or suggestion in either reference to be combined to "wirelessly transmit[] [a captured image] to a remote storage device

²⁵ Harris Col. 3, lines 9-17.

²⁶ *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992) (emphasis original).

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through an intermediate electronic device... ." Although the level of ordinary skill in the art in this situation may be relatively high, "The level of skill in the art cannot be relied on to provide the suggestion to combine references."²⁷ For this additional reason, the rejections should be reversed and the claims set for issue.

Based on the foregoing, Appellant respectfully submits that the rejections of the claims in this first grouping be reversed, and the claims set for issue.

B. Claims 5-7 and 40-41

Claims 5-7 and 40-41 stand rejected as allegedly obvious over Fukuoka in view of Harris. Claim 5 is illustrative of this grouping of claims. This grouping is for purposes of this appeal only, and should not be construed to mean the patentability of any of the claims may be determined, in later actions before a court, based on the grouping. Rather, the presumption of 35 U.S.C. § 282 shall apply to each claim individually.

Claims 5-7 are dependent from claim 1, and claims 40-41 are dependent from claim 36, and thus all these claims should be allowed for the same reasons as the grouping of claims 1-2, 8-9, 32-36 and 38. Moreover, representative claim 5 specifically recites "The portable electronic device of claim 1 wherein said transceiver begins transmitting said images when said CPU determines said memory to have reached a threshold." The Office action dated January 13, 2005 admits that "Fukuoka teaches a system to command and control a remote digital camera... ."²⁸ In order to arrive at the alleged obviousness of representative claim 5, the Office action proposes a modification to Fukuoka (taken with Harris); however, this modification changes the principle of operation of Fukuoka.

If the proposed modification or combination of prior art would change the principle of operation of the prior art being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.²⁹

²⁷ MPEP 2143.01 (8th Ed. Rev. 2, May 2004, p. 2100-129); *AI-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 40 USPQ2d 1161 (Fed. Cir. 1999).

²⁸ Office action dated January 13, 2005, Page 4.

²⁹ MPEP 2143.02 (8th Ed. Rev. 2, May 2004, p. 2100-132); *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

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The Office action admits as a matter of law that Fukuoka teaches a system to remotely control the camera. To modify the Fukuoka camera to begin "transmitting said images when said CPU [of the portable electronic device] determines said memory to have reached a threshold" changes the principle of operation of Fukuoka of being remotely controlled. For this reason alone the rejections of this grouping of claims should be reversed.

Notwithstanding the inappropriateness of the modification, the Office action dated January 13, 2005 fails to establish a motivation to change the principle of operation of Fukuoka to meet the claimed limitations. Neither Fukuoka nor Harris appear to teach such a modification, and the Office action fails to make a clear and particular showing of actual evidence of motivation to make the modification³⁰ as it merely parrots the limitation at issue:

[I]t would have been obvious to one having ordinary skill in the art at the time of the invention to modify Fukuoka with a command to begin transmitting images stored in the camera when the CPU determines the memory is full or has reached some capacity point in the normal procedure to remotely store and to maintain operation.³¹

The fact that it may be possible to modify Fukuoka as suggested in the Office action does not make the modification obvious.³²

Based on the foregoing, Appellant respectfully submits that the rejections of the claims in this second grouping be reversed, and the grouping set for issue.

³⁰ See *In re Dembiczek*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) ("We have noted that evidence of a suggestion or motivation to combine may flow [from many sources]. ... The range of sources, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular.").

³¹ Office action dated January 13, 2005, paragraph spanning Pages 4 and 5.

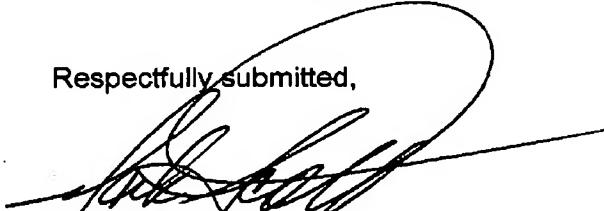
³² *In re Fritch*, 972 F.2d at 1266, 23 USPQ2d at 1783-1784.

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VIII. CONCLUSION

For the reasons stated above, Appellant respectfully submits that the Examiner erred in rejecting all pending claims. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,



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IX. CLAIMS APPENDIX

1. (Original) A portable electronic device, comprising:
 - a CPU;
 - a transceiver coupled to said CPU, said transceiver capable of wireless communications;
 - a memory unit coupled to said CPU; and
 - an image capture device coupled to said CPU, said image capture device acquires an image;
 - wherein said transceiver wirelessly transmits said image to a remote storage device through an intermediate electronic device; and
 - wherein said transceiver automatically begins transmitting said images after said image is acquired by said image capture device.
2. (Original) The portable electronic device of claim 1 wherein said transceiver is further capable of Bluetooth wireless communications.
3. (Withdrawn) The portable electronic device of claim 1 further including an input control coupled to said CPU;
 - wherein said transceiver transmits the image when said input control is activated.
4. (Withdrawn) The portable electronic device of claim 3 wherein said transceiver is further capable of Bluetooth wireless communications.
5. (Original) The portable electronic device of claim 1 wherein said transceiver begins transmitting said images when said CPU determines said memory to have reached a threshold.
6. (Original) The portable electronic device of claim 5, wherein said threshold is programmable.

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7. (Original) The portable electronic device of claim 6, wherein said transceiver is further capable of Bluetooth wireless communications.

8. (Original) The portable electronic device of claim 1, wherein said transmitter of said portable electronic device may receive images from said remote storage device.

9. (Original) The portable electronic device of claim 8 wherein said transceiver is further capable of Bluetooth wireless communications.

10. (Withdrawn) A cell phone, comprising:

a CPU;

a memory unit coupled to said CPU;

at least two transceivers both coupled to said CPU, a first transceiver providing communication to a portable electronic device and a second transceiver providing communication to a remote storage device;

wherein said cell phone transfers images from said portable electronic device to said remote storage device.

11. (Withdrawn) The cell phone of claim 10, wherein communications between said portable electronic device and said first transceiver comprise the Bluetooth protocol.

12. (Withdrawn) The cell phone of claim 10, wherein communications between said remote storage device and said second transceiver comprise the 3G protocol.

13. (Withdrawn) A portable computer; comprising:

a CPU;

a memory unit coupled to said CPU;

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at least two transceivers both coupled to said CPU, a first transceiver providing communication to a portable electronic device and a second transceiver providing communication to a remote storage device;
wherein said portable computer transfers images from said portable electronic device to said remote storage device.

14. (Withdrawn) The portable computer of claim 13, wherein communications between said portable electronic device and said first transceiver comprise the Bluetooth protocol.

15. (Withdrawn) The portable computer of claim 13, wherein communications between said remote storage device and said second transceiver comprise the 3G protocol.

16. (Withdrawn) A cell phone comprising:
a CPU;
a memory unit coupled to said CPU;
at least two transceivers both coupled to said CPU, a first transceiver providing communication to a portable electronic device and a second transceiver providing communication to a remote storage device;
wherein said cell phone transfers images from said remote storage device to said portable electronic device using a communications link.

17. (Withdrawn) The cell phone of claim 16, wherein communications between said portable electronic device and said first transceiver comprise the Bluetooth protocol.

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18. (Withdrawn) The cell phone of claim 16, wherein communications between said remote storage device and said second transceiver comprise the 3G protocol.

19. (Withdrawn) A portable computer comprising:
a CPU;
a memory unit coupled to said CPU;
at least two transceivers both coupled to said CPU, a first transceiver providing communication to a portable electronic device and a second transceiver providing communication to a remote storage device;
wherein said cell phone transfers images from said remote storage device to said portable electronic device using a communications link.

20. (Withdrawn) The portable computer of claim 19, wherein communications between said portable electronic device and said first transceiver comprise the Bluetooth protocol.

21. (Withdrawn) The portable computer of claim 19, wherein communications between said remote storage device and said second transceiver comprise the 3G protocol.

22. (Withdrawn) A system for remote data storage and retrieval for portable electronics, comprising:
a portable electronic device further comprising memory, a central processing unit ("CPU"), an image capture device, and a transceiver;
an intermediary electronic device further comprising memory and at least two transceivers;
a communication link between the portable device and the intermediary electronic device;

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a communication link between the intermediary electronic device and a cellular network wherein said cellular network is connected to the Internet;
a remote storage device further comprising data storage space wherein said storage device is connected to the Internet; and
wherein said portable electronic device is able to transmit images to said remote storage device.

23. (Withdrawn) The system of claim 22 wherein said portable electronic device comprises a digital camera.

24. (Withdrawn) The system of claim 23 wherein said communications link between said portable electronic device and said intermediary electronic device further comprises a Bluetooth wireless connection.

25. (Withdrawn) The system of claim 24 wherein said communications link between said intermediary electronic device and said cellular network further comprises a 3G wireless connection.

26. (Withdrawn) The system of claim 25 wherein said intermediary electronic device comprises a cellular telephone.

27. (Withdrawn) The system of claim 25 wherein said intermediary electronic device comprises a portable computer.

28. (Withdrawn) The system of claim 23 wherein said transceiver automatically begins transmitting said image after said image is acquired by said image capture device.

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29. (Withdrawn) The system of claim 23 wherein said camera further includes an input control and said transceiver transmits said image when said input control is activated.

30. (Withdrawn) The system of claim 23 wherein said transceiver begins transmitting said images when said CPU determines said memory to have reached a threshold.

31. (Withdrawn) The system of claim 30 wherein said threshold is programmable.

32. (Original) A method for remote data storage and retrieval for portable electronics, comprising:

- (a) acquiring an image with a portable electronic device;
- (b) transmitting said image to an intermediate electronic device using wireless communications;
- (c) further transmitting said image to a cellular network using wireless communications, wherein said cellular network is also connected to the Internet; and
- (d) further transmitting said image to a remote storage device, wherein said storage device is also connected to the Internet.

33. (Original) The method of claim 32 wherein said portable electronic device comprises a digital camera.

34. (Original) The method of claim 33 wherein said wireless communications of step (b) comprises a Bluetooth wireless connection.

35. (Original) The method of claim 34 wherein said wireless communications of step (c) comprises a 3G wireless connection.

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Appeal Brief dated March 30, 2005
Reply to final Office action of January 13, 2005**

36. (Original) The method of claim 35 wherein said intermediary electronic device comprises a cellular telephone.

37. (Withdrawn) The method of claim 35 wherein said intermediary electronic device comprises a portable computer.

38. (Original) The method of claim 36 wherein the transmission of said image automatically begins after the image is acquired by said digital camera.

39. (Withdrawn) The method of claim 36 wherein said digital camera further includes an input control and the transmission of said image begins when the input control is activated.

40. (Original) The method of claim 36 wherein said digital camera further includes a central processing unit ("CPU") and memory;

wherein the transmission of said image begins when said CPU determines said memory to have reached a threshold.

41. (Original) The method of claim 40 wherein said threshold is programmable.